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## 15.1 Scope Note

The rules in this chapter govern the post-dispositional review proceedings in both delinquency cases and in designated cases in which the court has imposed a juvenile disposition following conviction. For an explanation of review hearings in “automatic” waiver cases, see Chapter 23, Part II. For an explanation of review hearings in designated cases in which the court has delayed imposition of adult sentence, see Chapter 21.

All of the progress reports and review hearings discussed in this chapter occur after the judge or referee has chosen one or more of the dispositional options available in MCL 712A.18(1); MSA 27.3178(598.18)(1).<sup>\*</sup> These reports and hearings are as follows:

- F Dispositional reviews that are required in all cases before a juvenile may be moved to a more physically restrictive placement. MCR 5.944(E).<sup>\*</sup>
- F Dispositional reviews every 182 days for all juveniles who have been placed into foster care. MCR 5.944(E).<sup>\*</sup>
- F Progress reports every 6 months for juveniles committed to private institutions. MCL 712A.24; MSA 27.3178(598.24).<sup>\*</sup>
- F Progress reviews every 182 days for all juveniles who are committed to a public institution or agency. MCR 5.944(C).<sup>\*</sup>
- F Commitment review hearings at age 19 to determine whether the Family Division should continue jurisdiction over a court-committed juvenile until age 21. MCR 5.944(D).<sup>\*</sup>

<sup>\*</sup>See Section 12.8  
for a summary  
of those options.

<sup>\*</sup>See Section 15.3.

<sup>\*</sup>See Section 15.4.

<sup>\*</sup>See Section 15.5.

<sup>\*</sup>See Section 15.6.

<sup>\*</sup>See Section 15.7.

\*See Section 15.8.

F Commitment reviews at any age that are initiated by the institution to which the juvenile has been committed. MCR 5.944(D).\*

## 15.2 Right to Have Judge Conduct Review Hearings

The parties in a delinquency proceeding have a right to have a judge preside at any hearing on the formal calendar. MCR 5.912(A) and 5.903(A)(13)(a). “Formal calendar” is defined as all judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing. MCR 5.903(A)(6). Thus, the parties have a right to have a judge preside at review hearings. However, unless the parties demand that a judge preside, the court may assign a referee to preside at a review hearing. MCR 5.913(A)(1).

\*See Chapter 13 for a discussion of review of referees’ recommended findings and conclusions.

MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), specify the requisite qualifications of a referee. If the juvenile is charged with a criminal offense under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), only referees who are licensed attorneys may conduct delinquency proceedings other than preliminary inquiries or preliminary hearings. The sole exception is for probation officers or county agents who were designated to act as referees by a probate judge prior to January 1, 1988, and were acting as referees at that time.\*

**NOTE:** The referee who conducted the trial and made the disposition may also conduct the post-dispositional reviews in the case. MCR 5.913(B).

## 15.3 Required Hearings Before a Juvenile May Be Moved to a More Physically Restrictive Placement

Any disposition order entered in a delinquency case may be supplemented or amended in accordance with MCL 712A.18; MSA 27.3178(598.18), as long as the juvenile remains under the jurisdiction of the court. However, if not specified in the original order of disposition, the juvenile shall not be moved to a more physically restrictive placement absent a hearing\* and further order of the court, or absent the consent of the juvenile. MCR 5.944(E).

\*See Form JC 57 and Chapter 12, Part I for the requirements for dispositional hearings.

## 15.4 Dispositional Review Hearings for Juveniles Placed in Foster Care

MCR 5.944(E) provides that if the juvenile is in foster care, the court shall hold a dispositional review hearing no later than every 182 days as provided in MCL 712A.19(2); MSA 27.3178(598.19)(2). That provision, in turn, states that:

- F if a child is placed in foster care, the court must review the placement not more than 182 days after entry of the order of disposition and, if the child remains in foster care after the initial hearing, 182 days thereafter;
- F the hearing must be conducted by a judge or referee and must be recorded stenographically; and
- F the court shall review the performance of the juvenile, the juvenile's parents, guardian, or custodian, the juvenile worker, and other persons providing assistance to the juvenile and his or her family.

### A. Notices of Hearings

Notice of a hearing held pursuant to MCL 712A.19(2); MSA 27.3178(598.19)(2), shall be served on the following persons:

- (a) the agency, which shall advise the child of the hearing if the child is 11 years of age or older;
- (b) the foster parent or custodian of the juvenile;
- (c) if parental rights have not been terminated, the parents of the juvenile;
- (d) the guardian of the juvenile;
- (e) the guardian ad litem of the juvenile;
- (f) the elected leader of the Indian tribe (if tribal affiliation has been determined);
- (g) the attorney for the juvenile and the prosecuting attorney (if she or he has appeared);
- (h) the juvenile (if 11 years of age or older); and
- (i) other persons as the court may direct.

MCL 712A.19(5)(a)–(i); MSA 27.3178(598.19)(5)(a)–(i).

### B. Required Evidence at Hearings

An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other evidence offered at the hearing. MCL 712A.19(11); MSA 27.3178(598.19)(11).

### C. Required Decisions at Hearings

The court must determine the continuing necessity and appropriateness of the child's placement at the dispositional review hearing. The court shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order. MCL 712A.19(8); MSA 27.3178(598.19)(8).

### D. Waiver of Hearings If Child Is Returned Home

If more than 7 days' notice is given to all parties prior to the return of a child to his or her home (or if formal notice is waived), and if no party requests a hearing within 7 days of receipt of notice, the court may issue an order without a hearing allowing the agency to return the child to his or her home. MCL 712A.19(10); MSA 27.3178(598.19)(10).

\*See Section 12.8(D) for a discussion of commitment of juveniles to private institutions or agencies.

## 15.5 Progress Reports Every Six Months for Juveniles Committed to Private Institutions\*

When a placement is made to a private institution or agency under MCL 712A.18(1)(d); MSA 27.3178(598.18)(1)(d), the court must require that a progress report be made at least every 6 months. MCL 712A.24; MSA 27.3178(598.24).

\*See Section 12.8(E) for a discussion of commitment of juveniles to public institutions or agencies.

## 15.6 Progress Reviews Every 182 Days for Juveniles Committed to Public Institutions\*

MCR 5.944(C)(1) provides that the court shall review the progress of a juvenile it has committed to a public facility or institution under MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e).

### A. Time Requirements for Progress Reviews

The court must conduct progress reviews no later than 182 days after entry of the order of commitment, and semi-annually thereafter, so long as the juvenile remains in placement. MCR 5.944(C)(2).

### B. Reports for Progress Reviews

The court shall examine the report prepared by the Family Independence Agency covering placement, services being provided the juvenile, and the progress of the juvenile. MCR 5.944(C)(3). The court shall also examine the juvenile's annual report prepared pursuant to MCL 803.223; MSA 25.399(223), of the Juvenile Facilities Act, and the court may order changes in the juvenile's placement or treatment plan based on this review. MCL 712A.18c(3); MSA 27.3178(598.18c)(3).

## C. Required Hearings for Progress Reviews

Unless the court orders a more restrictive placement or treatment plan, there is no requirement that the court hold a hearing when conducting a progress review for a court-committed juvenile pursuant to MCR 5.944(C)(4).

However, if the court does order a more restrictive placement or treatment plan, then the court must conduct a review hearing that meets the requirements of MCR 5.944(D)(4).\*

\*See Sections 15.7(B)–(I), below, for a summary of these requirements.

## 15.7 Commitment Review Hearings to Extend Jurisdiction Until Age 21 for Juveniles Committed to Public Institutions

If the Family Division has exercised jurisdiction over the juvenile for a criminal offense or status offense, the court shall retain jurisdiction over the juvenile until age 19, unless the juvenile is released earlier by court order,\* or unless the court has extended jurisdiction until age 21 for certain serious offenses. MCL 712A.2a(1) and (2); MSA 27.3178(598.2a)(1) and (2).

\*See Form JC 36.

### A. Serious Offenses Allowing Extension of Jurisdiction Until Age 21

MCL 712A.2a(2); MSA 27.3178(598.2a)(2), and MCL 712A.18d(1); MSA 27.3178(598.18d)(1), provide that the juvenile court may extend jurisdiction until age 21 if the juvenile is committed to a public institution under MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e), for an offense that would be a violation or attempted violation of any of the following:

- F burning a dwelling house, MCL 750.72; MSA 28.267;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to rob while unarmed, MCL 750.88; MSA 28.283;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F attempted murder, MCL 750.91; MSA 28.286;
- F first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2);
- F escape or attempted escape from a juvenile facility, MCL 750.186a; MSA 28.383a;
- F first-degree murder, MCL 750.316; MSA 28.548;

- F second-degree murder, MCL 750.317; MSA 28.549;
- F kidnapping, MCL 750.349; MSA 28.581;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7);
- F armed robbery, MCL 750.529; MSA 28.797;
- F unarmed robbery, MCL 750.530; MSA 28.798;
- F bank, safe, or vault robbery, MCL 750.531; MSA 28.799;
- F carjacking, MCL 750.529a; MSA 28.797(a); and
- F possession of, or manufacture, delivery, or possession with intent to manufacture or deliver, 650 grams or more of any Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i).

**NOTE:** MCR 5.944(D)(3) does not refer to the Juvenile Code when listing these offenses. Instead, the court rule describes these offenses as all of the reportable juvenile offenses listed at MCR 5.903(B)(6), except breaking and entering, larceny in a building, and unlawfully driving away an automobile. However, when the two lists are compared, it turns out that the offenses contained in MCL 712A.2a(2); MSA 27.3178(598.2a)(2), are the same as the offenses referenced at MCR 5.944(D)(3).

## B. Time Requirements for Hearings

When a juvenile has been placed in a facility or institution under MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e), for having committed one of the serious offenses listed above, the court shall schedule a commitment review hearing to be held within 42 days before the juvenile reaches age 19, unless adjourned for good cause. MCR 5.944(D)(3).

## C. Notice Requirements for Hearings\*

Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the facility to which the juvenile has been committed, the juvenile, and the parent of the juvenile if the parent's address or whereabouts are known, at least 14 days prior to the hearing. MCR 5.944(D)(2) and MCL 712A.18d(4); MSA 27.3178(598.18d)(4).

The notice must clearly indicate that the court may extend jurisdiction over the juvenile until age 21, and advise the juvenile and his or her

\*See Section 12.3(C) for a discussion of required parental attendance at hearings after the court has taken jurisdiction over the juvenile for a criminal offense.

parents that the juvenile has the right to an attorney. MCR 5.944(D)(3)(a) and MCL 712A.18d(4); MSA 27.3178(598.18d)(4).

## D. Right to Counsel at Hearings

The court must appoint an attorney to represent the juvenile at the required review hearing unless legal counsel has been retained. MCR 5.944(D)(3)(b) and MCL 712A.18d(4); MSA 27.3178(598.18d)(4).<sup>\*</sup> The court may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply. MCL 712A.18d(4); MSA 27.3178(598.18d)(4).

<sup>\*</sup>See Form JC 03.

## E. Objectives of Hearings

MCR 5.944(D)(1) and MCL 712A.18d(1); MSA 27.3178(598.18d)(1), provide that the objectives of commitment review hearings include:

- F deciding whether to release a court-committed juvenile;
- F deciding whether to continue jurisdiction over the court-committed juvenile until age 21; and
- F to give the juvenile an opportunity to be heard before moving a juvenile to a more physically restrictive level of placement or ordering more restrictive treatment.<sup>\*</sup>

<sup>\*</sup>See Section 15.6(C), above.

## F. Factors to Consider at Hearings

The purpose of the required commitment review hearing is to determine whether the juvenile has been rehabilitated or still presents a serious risk to public safety. If the court determines at the required review hearing that the juvenile has not been rehabilitated *or* that the juvenile does present a serious risk to public safety, jurisdiction over the juvenile shall be continued until the juvenile reaches age 21. MCL 712A.18d(1); MSA 27.3178(598.18d)(1).<sup>\*</sup>

<sup>\*</sup>See Form JC 57.

In making these determinations, the court must consider all of the following factors:

- F the extent and nature of the juvenile's participation in education, counseling, or work programs;
- F the juvenile's willingness to accept responsibility for prior behavior;
- F the juvenile's behavior in the current placement;
- F the prior record and character of the juvenile and physical and mental maturity;
- F the juvenile's potential for violent conduct as demonstrated by prior behavior;

- F the recommendations of the institution, agency, or facility charged with the juvenile's care; and
- F any other information the prosecuting attorney or the juvenile may submit.

MCR 5.944(D)(3)(c)(i)–(vii) and MCL 712A.18d(1)(a)–(g); MSA 27.3178(598.18d)(1)(a)–(g).

### **G. Burden of Proof at Hearings**

The juvenile has the burden of proving by a preponderance of the evidence that he or she has been rehabilitated and does not present a serious risk to public safety. MCR 5.944(D)(3)(c) and MCL 712A.18d(2); MSA 27.3178(598.18d)(2).

### **H. Evidence and Reports at Hearings**

MCR 5.944(D)(3)(c) states that evidence at commitment review hearings shall be received under the rules applicable to a dispositional hearing pursuant to MCR 5.943(C). MCR 5.943(C)(1)–(3), in turn, provide that:

(1) At the dispositional hearing, all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.

(2) The juvenile or the juvenile's attorney and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

(3) No assertion of evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

MCL 712A.18d(5); MSA 27.3178(598.18d)(5), provides that the institution charged with the care of the juvenile shall prepare for the court commitment reports as provided in MCL 803.225; MSA 25.399(225), of the Juvenile Facilities Act. These reports must contain a description of:

- F the services and programs currently being utilized by, or offered to, the juvenile and the juvenile's participation in those services and programs;
- F where the juvenile currently resides and the juvenile's behavior in his or her current placement;
- F the juvenile's efforts toward rehabilitation; and



- F recommendations for the juvenile's release or continued custody.

In addition, the court may also consider the annual progress reports created pursuant to MCL 803.223; MSA 25.399(223). *Id.*

### **I. Victim's Right to Make or Submit Statement at Review Hearing\***

\*See also Section 15.9, below.

Upon the victim's request, the prosecuting attorney must give the victim notice of a review hearing conducted pursuant to MCL 712A.18; MSA 27.3178(598.18). The victim has the right to make a statement at the hearing, submit a written statement for use at the hearing, or both. MCL 780.798(4); MSA 28.1287(798)(4).

### **J. Release of Juvenile at Age 21**

If the court continues jurisdiction over the juvenile, the juvenile shall be automatically discharged upon reaching the age of 21. MCL 712A.18d(1); MSA 27.3178(598.18d)(1), and MCL 803.307(2); MSA 25.399(57)(2) (discharge from state wardship at age 21).

## **15.8 Commitment Review Hearings Initiated by Institutions**

MCR 5.944(D)(4), MCL 803.225(2); MSA 25.399(225)(2), and MCL 712A.18d(3); MSA 27.3178(598.18d)(3), provide that on motion of the institution, agency, or facility to which the juvenile has been committed, the court may at any time discharge a juvenile upon a showing by the preponderance of the evidence that the juvenile has been rehabilitated and is not a risk to public safety. The review hearing may be conducted at any time before the juvenile reaches age 19 or, if the court has continued jurisdiction under MCL 712A.18d(1); MSA 27.3178(598.18d)(1), at any time before the juvenile reaches age 21.

The court, upon notice and opportunity to be heard, may also order the juvenile moved to a more restrictive level of placement or may order more restrictive treatment. MCR 5.944(D)(4).

The notice, procedural, and substantive requirements contained in MCR 5.944(D)(3) apply to commitment review hearings held under this subrule. Evidence must be received under the rules applicable to dispositional hearings under MCR 5.943(C). The court must appoint an attorney to represent the juvenile at the hearing if counsel has not been retained.\*

\*See Section 15.7, above.

\*See Section 7.19 for the applicability of the JCVRA.

## 15.9 Special Requirements Under the Juvenile Crime Victim's Rights Act\*

### A. Notice of Dismissal, Discharge, Transfer, or Name Change

Upon a written request, the court or Family Independence Agency must make a good faith effort to notify the victim before any of the following occurs:

- (a) the juvenile is dismissed from court jurisdiction or discharged from the jurisdiction of the Family Independence Agency;
- (b) the juvenile is transferred from a secure to a nonsecure juvenile facility; or
- (c) the juvenile has his or her name legally changed while under the jurisdiction of the Family Division or within 2 years of discharge from the jurisdiction of the Family Division.

MCL 780.798(1)(a)–(c); MSA 28.1287(798)(1)(a)–(c).

If the court or Family Independence Agency does not notify the victim prior to any of the above events, the court or agency must do so as soon as possible after any of the events. MCL 780.798(2); MSA 28.1287(798)(2).

### B. Notice of Escape\*

Upon the victim's written request, the court or Family Independence Agency must give to the victim notice of a juvenile's escape from a secure detention or treatment facility. The victim must be given immediate notice of the escape by any means reasonably calculated to give prompt actual notice. MCL 780.798(3); MSA 28.1287(798)(3). See also MCL 803.306a; MSA 25.399(56a) (notice requirements of facility in which state ward has been placed).

### C. Right to Make or Submit Statement at Review Hearings

Upon the victim's request, the prosecuting attorney must give the victim notice of a review hearing conducted pursuant to MCL 712A.18; MSA 27.3178(598.18). The victim has the right to make a statement at the hearing, submit a written statement for use at the hearing, or both. MCL 780.798(4); MSA 28.1287(798)(4).

\*See also Section 21.12, Note 2, for a discussion of MCL 750186a; MSA 28.383a, which makes it a felony to escape or attempt to escape from a juvenile facility.

## 15.10 Required Samples for DNA Profiling

A state ward under the jurisdiction of the Family Independence Agency for a violation of an enumerated offense shall not be placed in a community placement of any kind and shall not be discharged from state wardship until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers, and has provided samples for a determination of his or her secretor status.\*

\*See Section 4.12 for a detailed discussion of these requirements.

